

HON. ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT J. DICKSON,

Plaintiff,

vs.

ADESA INC., dba ADESA AUCTIONS INC., a
Delaware corporation,

Defendant.

Case No.: 2:12-cv-1500-RSL

STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged: (a) Medical documents of any party or non-party;
4 (b) Personnel files of non-party current or former employees of ADESA, Inc.;
5 (c) Documents relating to ADESA's business decisions to "inherit" vehicles and
6 documents relating to the auction process; (d) Non publicly-filed documents related to
7 any investigation, claim, or lawsuit relating to any allegation of a violation of federal or
8 state laws by any current or former employee of ADESA, Inc.; (e) compensation
9 information for current ADESA employees; (f) payroll records; (g) financial statements;
10 (h) tax returns and tax-related documents such as W-2 or 1099 forms.

11 3. SCOPE

12 The protections conferred by this agreement cover not only confidential material
13 (as defined above), but also (1) any information copied or extracted from confidential
14 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
15 and (3) any testimony, conversations, or presentations by parties or their counsel that
16 might reveal confidential material. However, the protections conferred by this
17 agreement do not cover information that is in the public domain or becomes part of the
18 public domain through trial or otherwise.

19 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20 4.1 Basic Principles. A receiving party may use confidential material that is
21 disclosed or produced by another party or by a non-party in connection with this case
22 only for prosecuting, defending, or attempting to settle this litigation. Confidential
23 material may be disclosed only to the categories of persons and under the conditions

1 described in this agreement. Confidential material must be stored and maintained by a
2 receiving party at a location and in a secure manner that ensures that access is limited to
3 the persons authorized under this agreement.

4 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the designating party, a receiving party
6 may disclose any confidential material only to:
7

8 (a) the receiving party's counsel of record in this action, as well as employees
9 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

10 (b) to parties and the officers, directors, and employees (including in house
11 counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation,
12 unless the parties agree that a particular document or material produced is for Attorney's Eyes
13 Only and is so designated;
14

15 (c) experts and consultants to whom disclosure is reasonably necessary for
16 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
17 A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;
23

24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
26 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. If a

1 witness refuses to execute Exhibit A, and confidential information is presented in the course of a
2 deposition, the parties shall advise the witness that the information is confidential and should not
3 be disclosed without order of the court or consent of the parties to the action, and obtain the
4 witnesses's verbal agreement. Pages of transcribed deposition testimony or exhibits to
5 depositions that reveal confidential material must upon the request of a party's attorney be
6 separately bound by the court reporter and may not be disclosed to anyone except as permitted
7 under this agreement;
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9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing or
12 referencing such material in court filings, the filing party shall confer with the designating party
13 to determine whether the designating party will remove the confidential designation,
14 whether the document can be redacted, or whether a motion to seal or stipulation and
15 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must
16 be followed and the standards that will be applied when a party seeks permission from
17 the court to file material under seal.
18

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
21 party or non-party that designates information or items for protection under this
22 agreement must take care to limit any such designation to specific material that qualifies
23 under the appropriate standards. The designating party must designate for protection
24 only those parts of material, documents, items, or oral or written communications that
25 qualify, so that other portions of the material, documents, items, or communications for
26

1 which protection is not warranted are not swept unjustifiably within the ambit of this
2 agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that
4 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,
5 to unnecessarily encumber or delay the case development process or to impose
6 unnecessary expenses and burdens on other parties) expose the designating party to
7 sanctions.
8

9 If it comes to a designating party's attention that information or items that it
10 designated for protection do not qualify for protection, the designating party must
11 promptly notify all other parties that it is withdrawing the mistaken designation.
12

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, disclosure or discovery material that qualifies for protection under
16 this agreement must be clearly so designated before or when the material is disclosed or
17 produced.

18 (a) Information in documentary form: (*e.g.*, paper or electronic
19 documents and deposition exhibits, but excluding transcripts of depositions or other
20 pretrial or trial proceedings), the designating party must affix the word
21 "CONFIDENTIAL" to each page that contains confidential material. If only a portion or
22 portions of the material on a page qualifies for protection, the producing party also must
23 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
24 margins).
25

26 (b) Testimony given in deposition or in other pretrial or trial

1 proceedings: the party asserting confidentiality must identify on the record, during the
2 deposition, hearing, or other proceeding, all protected testimony, without prejudice to
3 their right to so designate other testimony after reviewing the transcript. Any party or
4 non-party may, within fifteen days after receiving a deposition transcript, designate
5 portions of the transcript, or exhibits thereto, as confidential.
6

7 (c) Other tangible items: the producing party must affix in a prominent
8 place on the exterior of the container or containers in which the information or item is
9 stored the word "CONFIDENTIAL." If only a portion or portions of the information or
10 item warrant protection, the producing party, to the extent practicable, shall identify the
11 protected portion(s).
12

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive the
15 designating party's right to secure protection under this agreement for such material.
16 Upon timely correction of a designation, the receiving party must make reasonable
17 efforts to ensure that the material is treated in accordance with the provisions of this
18 agreement.
19

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a
22 designation of confidentiality at any time. Unless a prompt challenge to a designating
23 party's confidentiality designation is necessary to avoid foreseeable, substantial
24 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
25 litigation, a party does not waive its right to challenge a confidentiality designation by
26 electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that party must:

- (a) promptly notify the designating party in writing and include a copy

1 of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or
3 order to issue in the other litigation that some or all of the material covered by the
4 subpoena or order is subject to this agreement. Such notification shall include a copy of
5 this agreement; and
6

7 (c) cooperate with respect to all reasonable procedures sought to be
8 pursued by the designating party whose confidential material may be affected.

9 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
11 confidential material to any person or in any circumstance not authorized under this
12 agreement, the receiving party must immediately (a) notify in writing the designating
13 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
14 copies of the protected material, (c) inform the person or persons to whom unauthorized
15 disclosures were made of all the terms of this agreement, and (d) request that such
16 person or persons execute the "Acknowledgment and Agreement to Be Bound" that is
17 attached hereto as Exhibit A.
18

19 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

21 When a producing party gives notice to receiving parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection, the
23 obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure
24 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
25 established in an e-discovery order or agreement that provides for production without
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1 prior privilege review. Parties shall confer on an appropriate non-waiver order under
 2 Fed. R. Evid. 502.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each
 5 receiving party must return all confidential material to the producing party, including all
 6 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
 7 appropriate methods of destruction.
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9 Notwithstanding this provision, counsel are entitled to retain one archival copy of
 10 all documents filed with the court, trial, deposition, and hearing transcripts,
 11 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
 12 consultant and expert work product, even if such materials contain confidential material.
 13

14 The confidentiality obligations imposed by this agreement shall remain in effect
 15 until a designating party agrees otherwise in writing or a court orders otherwise.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 KRAM & WOOSTER, P.S.

18 DATED: 1/16/2013 /s/Richard Wooster
 19 Richard Wooster, WSBA No. 13752
 20 Attorneys for Plaintiff

21 OGLETREE, DEAKINS, NASH, SMOAK &
 22 STEWART, P.C.

23 DATED: 1/16/2013 /s/Sarah J. Evans
 24 Sarah J. Evans, WSBA No. 37409
 25 Attorneys for Defendant
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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3 Dated this 18th day of January, 2013.

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6 Robert S. Lasnik

7 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of Robert J. Dickson v. ADESA, Inc. dba ADESA Auctions, Inc., Case No.: 2:12-cv-1500-RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____